The British Medical Association (BMA) is a voluntary professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care.

The BMA does not have a political fund and is not affiliated to any political party or to the Trade Union Congress.

Key points

- The BMA believes that the Trade Union Act in its entirety risks diminishing not only the important role trade unions play in the workplace but also their legitimate right and need to represent their members’ interest.

- The Act undermines workers’ rights to representation and their right to express an opinion through industrial action, which is taken as a last resort. The BMA would always prefer to negotiate for a solution that is fair to both employees and employers – as we attempted to do during the junior doctor contract dispute.

- The BMA opposes the Important Public Services (Health) Regulations 2017 which place arbitrary, unnecessary and inappropriate restrictions on trade unions ballots. The ‘double ballot threshold’ contained within the Act appears simply to be a way of making it more difficult for trade unions to organise legitimate industrial action.

- The accompanying guidance, published by the government alongside the Important Public Services (Health) Regulations 2017, present a number of additional complications for trade unions looking to ballot for industrial action. It does not provide sufficient clarity to membership organisations whose members carry out a number of different responsibilities.

- During the passage of the Trade Union Act, the government stated that: ‘this Bill is not a declaration of war on the trade union movement’\(^1\). However, this Act, alongside the measures introduced by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, appears to be another ideological attempt to curtail the legitimate activities of trade unions and the fundamental right to take industrial action.

Industrial action

Industrial action is not a step which doctors take lightly and is always taken as a last resort. Members of the House of Lords will be aware of the industrial action carried out by junior doctors during 2016. Junior doctors took this action following the Government’s threat to impose a disputed junior doctor contract and an overwhelming response to a ballot of more than 37,000 junior doctors, following which 98% voted for strike action. The decision to ballot, and subsequently take, industrial action was unprecedented and was the first full walkout by doctors working in the NHS in 40 years.

During junior doctor industrial action cover was provided by consultants and other senior doctors with patient safety of paramount importance throughout. The BMA worked extensively with NHS employers, both nationally and locally, to ensure appropriate patient safety levels were maintained and all patient safety concerns over the course of the dispute were responded to appropriately.
Junior doctors, and other health professionals, have a fundamental right to take industrial action yet the guidance which accompanies the legislation adds further complications and reaffirms the BMA’s belief that the Trade Union Act is a disproportionate and ideological attempt to curtail the legitimate activities of trade unions to withdraw labour. The administrative burden placed on unions by the Act and accompanying regulations is huge.

**Trade Union Act**

The Trade Union Act amends trade union legislation and introduces a requirement for a minimum threshold of a 50% turnout in all industrial action ballots. The Act, and these regulations, introduces an additional threshold of support to be achieved if the union believes that a majority of the balloted members work in the defined ‘important public services’. In such a circumstance 40% of the eligible membership must vote in favour of industrial action for any subsequent action taken to be legal. In this situation, this would mean that if a union achieved a 50% response rate to its ballot, then 80% (40% of the entire membership) of those respondents would need to vote in favour of strike action for it to be legal.

**Important Public Services (Health) Regulations**

The Important Public Services (Health) Regulations stipulate what constitutes an ‘important public service’ within the Trade Union Act and therefore which services are included in the double ballot threshold. The BMA believes that the ballot threshold levels introduced under the Act are arbitrary, unnecessary and inappropriate. There is no evidence as to why an additional 40% threshold in ‘important public services’ has been chosen and the purpose of the double ballot threshold appears only to be to make it more difficult for unions to organise legitimate industrial action.

Industrial action already requires a majority of members’ votes cast to be in favour to proceed. An additional 40% requirement in ‘important public services’ appears to place particularly punitive restrictions on workers in these unions. It implies that the current situation leads to illegitimate industrial action. The introduction of a 40% threshold of all members assumes that all those who abstain from voting would vote ‘no’. There is no basis for such an assumption, and, in fact, there is no evidence to suggest that those who vote are unrepresentative of the membership body as a whole.

**International comparisons**

In France, Greece, Italy, Norway, Spain and Germany, ballots are not even required if the action decided by the trade union body is deemed ‘reasonable’ or ‘generally acceptable’ in line with a number of key principles that vary by country. The measures contained within the Trade Union Act are more closely aligned with trade union laws in Eastern Europe. Strikes in the Czech Republic require the consent of one third of those eligible to vote: lower than the 40% threshold included in the Trade Union Act. In Bulgaria, Slovakia and Romania, industrial action is only lawful if a majority of the entire electorate – i.e. more than 50% vote in favour of industrial action. Latvia and Lithuania require various forms of three-quarters majority for strike action to go ahead.

These are the only countries we are aware of that operate higher thresholds than those contained in the Important Public Services (Health) Regulations, which appear to be another ideological attempt by the government to curtail the legitimate actions of trade unions and the fundamental right to take industrial action.

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**References**

1. Former Secretary of State for Business, Innovation and Skills (Sajid Javid), Trade Union Bill, Second Reading, 14th September 2015: [http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150914/debtext/150914-0001.htm#150914600001](http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150914/debtext/150914-0001.htm#150914600001)